AMENDMENTS TO THE DRAWINGS:

The attached sheet of drawings includes changes to all figures, and replaces the original sheets of drawings. The drawing sheets are properly labeled as replacement drawings.

Attachment: Replacement Sheets

REMARKS

Claims 41-60 are currently pending. The amendment of claim 41 and new claims 42-60, added to enhance the scope of Applicant's patent coverage, are supported by page 8, lines 2-6, page 18, lines 15-19, page 19, lines 5-9, page 29, line 14, through page 30, line 4, page 42, line 14, through page 43, line 6, and original claims 15-29, and elsewhere, in the application as filed. It is respectfully submitted that no new matter has been added.

Objection to Drawings

Seventeen sheets of drawings are being submitted with this response. It is believed that these drawings are properly labeled as replacement sheets. Applicant respectfully requests that the objection to the drawings be removed.

Claim Rejections – 35 USC 101

Claim 41 has been amended for compliance with In re Bilski. The Patent Office is respectfully requested to withdraw its rejection of claim 41 under 35 U.S.C. 101.

Claim Rejections – 35 USC 103

The Patent Office rejected claim 41 under 35 U.S.C. 103(a) as being unpatentable over "Automating Authentic Assessment with Rubrics" ("Automating") and "Administrators at Stone Middle School Love their Teacher Assessment Tools" ("Administrators") (both referred to by the Patent Office as "Stone") in view of Trenholm, U.S. Patent No. 6,120,299.

Claim 41 recites, in pertinent part, as follows:

> mapping, by the computer system, said machine readable representation of said contextual assessment input information to said rubric information to yield results of said mapping; and
> storing, by the computer system, said results of said mapping;…
> where mapping the contextual assessment input information to rubric information further creates a new benchmark within said rubric information during mapping of said contextual assessment input information to said matching benchmark

i)   Prior Art Rejection under 35 USC 103 – Stone v Trenholm

As the Patent Office admits in paragraph 14, on page 5, of the Office Action dated February 9, 2009 Stone ("Automating Authentic Assessment with Rubrics" and "Administrators at Stone Middle School Love their Teacher Assessment Tools") does not teach or suggest "where

mapping the contextual assessment input information to rubric information further creates a new benchmark within said rubric information during mapping of said contextual assessment input information to said matching benchmark." "Automating" (i.e., "Stone") on page 4 teaches "rubric assessment on the computer" where "recording performance can be simplified with computerized form." "Databases hold fields of distinct information types for each record or client." "Databases can perform mathematical functions to total scores for each student's individual performance grades." On page 5 of "Automating", there is disclosure of PDAs that have handwriting recognition capability. "Administrators" (i.e. "Stone") on page 2 discloses as follows:

> During the last five years at Stone Middle School, administrators have used an eMate, a small laptop-like version of the Newton Operating System .... Shana's informed Digital Form Designer was used to create a mobile database with many of the common observation comments that an administrator might make.
> After the administrator has captured their observations, this data would be downloaded onto a desktop machine, edited, and printed. The administrator was then ready to review the form with the teacher. Task done!

Stone, at the bottom of page 3 of Administrators, discloses "a rubric is a scoring guide that differentiates, on an articulated scale, among a group of sample behaviors, or evidences of thought that are responding to the same prompt." The Patent Office asserts "a scoring guide for behaviors" on page 4, paragraph 13, of the February 9, 2009 Office Action to be "benchmarks." The Patent Office seems to want to call a scoring guide both a rubric and benchmarks, but Applicant on page 7, lines 14-15, and in Figure 1, discloses a rubric 100 includes criteria 110 and benchmarks. Thus, the Patent Office is inconsistent in using terminology in equating a scoring guide to be both a rubric and benchmarks. Alternatively, if the Patent Office meant that behaviors are benchmarks, then Stone would still fail as a suitable teaching for mapping the contextual assessment input information to rubric information to create a new benchmark because Stone does not teach that the mapping operation creates a new behavior (i.e., benchmark). A first deficiency is that Stone provides no clear teaching for a benchmark.

The Patent Office considers, in paragraph 15, on page 6, of the February 9, 2009 Office Action, Trenholm to address a (i.e., second) deficiency of Stone of "where mapping the

contextual assessment input information to rubric information further **creates a new benchmark** within said rubric information during mapping of said contextual assessment input information to said matching benchmark." The Patent Office asserted in paragraph 15 of the February 9, 2009 Office Action, that Trenholm, in column 4, lines 27-34, and column 11, lines 38-56, teaches that "if the user determines that the rubric is flawed… after which the changed rubric is used to rescore the item (i.e., the assessment input), thus as a final score is not produced until after the rubric is modified, the new benchmark is created during the mapping of the assessment input information."

Trenholm, column 4, lines 27-34, discloses that a user may change a rubric. Trenholm, in column 11, lines 38-56, referring to Figure 9, discloses that a user may modify a scoring rubric. Figure 9 shows that a User may modify an item score in step 332, may modify a feature score in step 342, and may modify a rubric in step 352.

Applicant's disclosure distinguishes scores and rubrics from benchmarks. Applicant's disclosure, in page 18, lines 15-19, provides as follows:

> It should further be noted that **mapping assessment input information to rubric information can create a new benchmark,** or at least one new criteria, or a new rubric within the rubric information during mapping of the assessment input information to the matching benchmark or matching criteria. While this may occur upon a failure of the mapping operation, it may also be the intent of the author or system to create a new benchmark, a new criteria or a new rubric.

Applicant's disclosure, in page 7, lines 9-21, provides as follows: "3. **SCORES**: these represent the assessment values (results/gradations) that can be assigned for each of the criteria." "4. **BENCHMARKS**: these are the examples of standards of an assessment that have been assigned to each criteria and each associated score for that criteria." It should therefore be clear that the scores disclosed in column 4, lines 27-34, in column 11, lines 38-56, and Figure 9, in Trenholm, are not benchmarks.

Thus, Trenholm does not remedy the above-noted deficiencies of Stone.

ii) <u>Neither Stone nor Trenholm teach Mapping Results in the Creation of a New Benchmark</u>

Even if Stone were amenable to the creation of new benchmarks, Stone still does not

disclose or suggest "A method to assess an entity, comprising: selecting, through a computer system,... where **mapping** the contextual assessment input information to rubric information further **creates a new benchmark** within said rubric information during mapping of said contextual assessment input information to said matching benchmark." This is because Stone does not teach mapping results to anything other than a new score.

iii) Taking of Official Notice

The Patent Office has taken Official Notice "that it is old and well known to make changes to or create new benchmarks, even during the collection of assessment data."

Applicant challenges the taking of Official Notice. Claim 41 does not recite, as the Patent Office asserts on page 6, lines 11-12, of the February 09, 2009 Office Action, making "changes to or create new benchmarks," but does recite "where mapping the contextual assessment input information to rubric information further creates a new benchmark within said rubric information during mapping." (The other independent claims 46 and 53 recite subject matter similar to that recited by claim 41.) Applicant requests that a reference be provided that provides the teaching of the claimed subject matter for which Official Notice has been taken.

MPEP 2144.03, relating to the taking of Official Notice, in pertinent part, recites:

> Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.
> **It would <u>not</u> be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.**

Applicant does not admit that it is old and well known, on a computer, "...mapping the contextual assessment input information to rubric information further creates a new benchmark within said rubric information during mapping." Neither Stone nor Trenholm teach or suggest this claimed subject matter.

Applicant requests that the Patent Office provide one or more references that teach

the above noted deficiency of Stone and Trenholm. Alternatively, if the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). **If the Examiner is relying on personal knowledge in taking Official Notice, Applicant requests that the declaration provide a signed affidavit in compliance with 37 CFR 1.104(d)(2).**

Accordingly, claims 41-59 are allowable over Stone in view of Trenholm.

iv) Claims 45, 52, 59

Furthermore, claims 45, 52, and 59, recite, identically or similarly, as follows: "wherein the computer system is configurable to convert audio or visual contextual assessment input information into the machine readable representation."

None of the cited references teach or suggest this subject matter.

For this additional reason, claims 45, 52, and 59 are allowable over the prior art of record.

v) Claim 60

Furthermore, claim 60 recites as follows: "A computer readable storing medium as in claim 53, wherein the rubric comprises multiple levels of criteria, wherein the multiple levels of criteria are represented by an interface technique for representing multiple dimensions of information associated with the rubric."

None of the cited references teach or suggest this subject matter.

For this additional reason, claim 60 is allowable over the prior art of record.

The Patent Office is respectfully requested to reconsider and remove the rejections of the claim 41 under 35 U.S.C. based on Stone in view of Trenholm, and to allow all of the pending claims 41-60 as now presented for examination. An early notification of the allowability of claims 41-60 is earnestly solicited.

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450.

_4.15.2009_   _Jessica Rey_
Date   Name of Person Making Deposit